Filed 12/29/09 In re Jaime E. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In the Matter of JAIME E., a Person Coming Under Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JAIME E., Defendant and Appellant.	B213576 (Los Angeles County Super. Ct. No. CK74208)

APPEAL from orders of the Superior Court of Los Angeles County, Randolph Hammock, Juvenile Court Referee. Affirmed in part; reversed in part; and remanded.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and Appellant.

James M. Owens, Assistant County Counsel, and William D. Thetford, Deputy County Counsel, for Plaintiff and Respondent.

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INTRODUCTION

Father Jaime E. appeals from the orders of the juvenile court declaring his child, 20-month-old Jaime, a dependent of the court (Welf. & Inst. Code, § 300, subds. (a) & (b)).[1] Father challenges the due diligence search conducted by the Department of Children and Family Services (the Department) to locate him and the notices it sent to him. Because the notice of the disposition hearing did not comply with the requirements of section 358, subdivision (a)(3), we reverse the disposition order.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Family background*

In August 2008, the Department detained one-month-old Jaime and filed a petition alleging mother physically abused the child and his half-brother,[2] and the children were exposed to domestic violence. Father admitted hitting mother and was arrested. Jaime was eventually placed with his maternal grandmother.

2. *Efforts to locate father and apprise him of the proceedings*

The juvenile court continued the detention hearing on September 3, 2008, to enable the Sheriff's Department to transport father from jail to court. Father was present for the continued detention hearing where the juvenile court appointed him counsel. Father then informed the court that he had been sentenced to 30 days in jail and ordered to complete a 52-week domestic-violence program. He would be released before the next scheduled hearing. The court found father to be the presumed father of Jaime. Father denied the allegations of the petition and submitted on the detention hearing.

After awarding father monitored visits with Jaime once he was released from jail, the court specifically ordered father to return to court for the next scheduled hearing, which would occur nine days after his release from jail, "*without any further order or subpoena*." (Italics added.) The court informed him that his counsel would provide him with the address of the courthouse and added, "just remember it's the Children's Court in

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[1] All further statutory references are to the Welfare and Institutions Code.

[2] Jaime has two half-siblings. Neither they nor mother is a party to this appeal.

Monterey Park, and this is 419." In response to the court's request that father provide an address for receipt of notices, father gave an address on Central Street in Los Angeles. Father answered affirmatively to the court's statement: "you understand that's the address we're going to use to mail you notices in this case?" Father's attorney also passed along a telephone number for father. The court responded: "Very good. All right, sir, I will see you back here on September 29th, okay?" Father responded, "Yes."

That was the last time father was seen. Father's attorney acknowledges that the address father gave the court was not valid. Father's last known address was reportedly an apartment on East 67th Street in Los Angeles where mother lived and where the postal services reported delivering mail to father. On September 29, 2008, the court continued the hearing and ordered the Department to submit a supplemental report addressing father's current incarceration status and whereabouts.

The Department's ensuing report and declaration of due diligence showed that it had inquired of the Los Angeles County Sheriff's Inmate Information Center, the Department of Justice, the Department of Corrections, and searched the probation index, among many other sources, and learned there was no match for father's name and birth date. The Department of Motor Vehicles (DMV) had not responded to the search request. The Department located a telephone number for a Jaime E. with an address on West 50th Street in Los Angeles, but that address was not recognized by the United States Postal Service and a call to that number reached a "fast busy signal." Mother stated she did not know how to contact father. Because the Postal Service indicated that father received his mail at the East 67th Street address, the Department sent notice of the October 20, 2008 hearing to father there. A copy of the petition was attached to the notice.

After a number of continuances, the Department learned that father was born in 1982, not 1972, the year that the Department had used in its search for father. The court ordered the Department to complete another due diligence search.

The Department's second due diligence search was based on father's correct birth date. As a result of this search, the Department uncovered an additional address for

father on Horner Avenue in Stockton. The East 67th Street address remained father's last known address. The DMV's information was still pending. The Department sent notice of the continued hearing to be held on January 21, 2009 to both the East 67th Street and the Stockton addresses. Notice to East 67th Street was returned as "Undeliverable as Addressed." The previous notice, sent to the East 67th Street address, was returned to sender, noting the address was "Vacant." *The notice to the Stockton address was delivered.*

3. *The adjudication*

Father did not appear at the January 21, 2009 contested adjudication hearing. His attorney reported that mother thought father was still in jail and yet the Sheriff's Department had no record that father was incarcerated. Counsel acknowledged that he had not heard from father since the September 5, 2008 hearing, at which time counsel gave father his business card. Concerned that father may have been deported, counsel argued that notice would have been deficient under the Hague Convention.

The juvenile court observed that father had been present in September 2008 and had received the court's order to appear without further notice or subpoena, with the result he was aware of the proceedings. The court also observed that the records indicated father was not in custody, and if he were in federal prison or on an immigration hold, the court was unaware of it. The court found: "The due diligence I got today was, I thought, an excellent due diligence. . . . One of the better due diligences I've seen from the Department, so I'm prepared to find that – due diligence doesn't require perfection; it requires reasonable, good faith efforts. It's clear that the due diligence has been satisfied . . . and I find it to be satisfied." The court ruled, based on the totality of the circumstances in the entire record, that adequate notice has been given to the father for all of the hearings. "[U]nfortunately his current whereabouts are unknown and reasonable due diligence efforts have been made to give him notice of today's hearing."

Proceeding with the hearing, father's counsel denied the allegations and opposed the court taking jurisdiction over the child. Father's counsel submitted on the Department's reports. After consulting with counsel off the record, the court dismissed

counts a-1, b-1, and j-1 and sustained the petition as amended finding the children described by section 300, subdivisions (a) and (b).

4. *The disposition hearing and additional efforts to locate father*

The juvenile court tentatively found that the Department was not required to offer family reunification services to a father whose whereabouts were unknown. Father's attorney requested a continuance pursuant to section 358 to locate and notify father of the proposal to deny reunification services to father. The court granted a two-day continuance to allow counsel to make reasonable efforts to contact father and scheduled a contested disposition hearing.

Two days later, father's attorney reported that he had been unable to reach father at the telephone number father had supplied at the detention hearing. The Department indicated that the Sheriff's Department reported having no Jaime E. in custody. The juvenile court had the same information. Father's attorney renewed his objection to notice and argued additionally that notice was improper because the Department did not notify father that it was recommending against family reunification services. (§ 358, subd. (a)(3).) The court overruled the objection and found that notice to father had been proper.

The juvenile court then found that father came within section 361.5, subdivision (b)(1) because his whereabouts were unknown, which finding was supported by clear and convincing evidence that a reasonably diligent search had failed to locate him. The court invited father's attorney to argue why, given the state of the record, it should order reunification services for father. Counsel argued, among other things, that notice was insufficient where the Department mailed copies of the petition to father but did not notify father of its recommendation to deny him services. The court offered, if father ever appears, it would look kindly on a section 388 petition for modification.

The court then ordered Jaime removed from father's custody and that father receive no services. (§ 361.5, subd. (b)(1).) Father's attorney filed father's notice of appeal challenging all orders and findings concerning the child that were entered prior to January 23, 2009.

CONTENTIONS

Father contends that the Department's due diligence search was incomplete and notices were not proper.

DISCUSSION

1. *We decline to dismiss this appeal on the grounds father did not personally authorize it.*

The Department contends we should dismiss this case because father did not authorize it. Father's attorney was the person who signed the notice of appeal.

"In the absence of a satisfactory showing that the party did not authorize counsel to sign the notice of appeal, we presume that [father's] counsel had the necessary authority to do so. [Citation.]" (*In re Asia L.* (2003) 107 Cal.App.4th 498, 505.)

Additionally, "where, as here, the very basis of the appeal is that the client did not receive proper notice of the action to be taken against [him] in the trial court, and there is no evidence [he] was even *aware* of what did take place, [he] cannot be expected, let alone required, to personally authorize an appeal." (*In re Steven H.* (2001) 86 Cal.App.4th 1023, 1030.) Fundamental notions of due process require that proper notice be given, particularly where, as here, parental rights are at issue. (*Id*. at p. 1031.) Where the heart of this appeal is counsel's contention that father never received notice of the jurisdiction and disposition hearings because his whereabouts are unknown, he would not have been available to authorize an appeal from those hearings. We decline to dismiss the appeal on this basis.

2. *Father had actual notice of the dependency*.

"Since the interest of a parent in the companionship, care, custody, and management of [her] children is a compelling one, ranked among the most basic of civil rights [citations], the state, before depriving a parent of this interest, must afford [her] adequate notice and an opportunity to be heard." (*In re B. G.* (1974) 11 Cal.3d 679, 688-689.) Accordingly, the Welfare and Institutions Code requires notification to the parent of all proceedings involving the child. (§ 302, subd. (b).)

Notice must comport with due process. (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 106.) " 'The means employed to give notice "must be such as one, desirous of actually informing the absentee, might reasonably adopt to accomplish it." ' [Citation.]" (*In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598.)

However, "[a] parent's general appearance at the detention hearing will be considered a waiver of the parent's right to challenge adequacy of notice of the proceedings. [Citations.]" (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) The *Raymond R.* court discerned "nothing in the statutory scheme to support" the parent's assertion that the Department "had a duty to track him continually throughout the dependency process even after he had been identified, contacted by a social worker, apprised of the proceedings, provided with counsel and participated in hearings." (*Ibid.*) Rather, the *Raymond R.* court held, "[t]he Department has a duty initially to make a good faith attempt to locate the parents of a dependent child. Once a parent has been located, it becomes the obligation of the parent to communicate with the Department and participate in the reunification process." (*Ibid.*)

This holding comports with section 316.1, subdivision (a), which provides, "Upon his or her appearance before the court, each parent or guardian shall designate for the court his or her permanent mailing address. The court shall advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent or guardian notifies the court or the social services agency of a new mailing address in writing."

Here, father was in court for the detention hearing. Father received appointed counsel and counsel gave father his business card. Father gave the juvenile court an address for receipt of notices. More important, the court ordered father to appear at the next hearing without further subpoena. As father was present at the detention hearing he had actual notice of the proceedings. Thereafter, given father provided the court with an address for notices, pursuant to section 316.1, subdivision (a), it became father's responsibility to keep the Department, or at the very least his attorney, apprised of his whereabouts. That he provided the court with a nonexistent address and then vanished

supports the conclusion that father intentionally absented himself from the proceedings. Additionally, father was appointed an attorney who, in turn, had a duty to speak with his or her client. In the absence of any evidence in the record to the contrary, we assume his attorney informed father of the consequences and import of the dependency proceeding. (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 915, citing Evid. Code, § 664.) Accordingly, father's general appearance was equivalent to personal service of summons and so the juvenile court had jurisdiction over father, continuing throughout the subsequent proceedings in the action. (*In re Larry P.* (1988) 201 Cal.App.3d 888, 895.)

3. *Efforts to locate father were reasonably calculated under the circumstances to apprise father.*

Father contends, nonetheless, that the Department's due diligence searches were inadequate. "Until parental rights have been terminated, both parents must be given notice at each step of the proceedings. [Citation.]" (*David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1019.) The Welfare and Institutions Code requires notification to the parent of all proceedings involving the child. (§ 302, subd. (b).) The parent must also be notified of *each review* hearing by mail or personal service. (§§ 366.21, subd. (b); 293.) Notice must comport with due process. (*In re DeJohn B.*, *supra*, 84 Cal.App.4th at p. 106.)

Father cites us to no case that describes the extent of a search once the juvenile court has assumed jurisdiction over a parent, i.e., continuing jurisdiction. "The child welfare agency must act with diligence to locate a missing parent. [Citation.] Reasonable diligence denotes a thorough, systematic investigation and an inquiry conducted in good faith. [Citation.]" (*In re Justice P.* (2004) 123 Cal.App.4th 181, 188.) The posting or publication of notices is not required in the search to locate a parent for the disposition hearing when the Department is recommending against offering services. (§ 361.5, subd. (b)(1).) "The failure to locate a parent or guardian after a good faith attempt 'shall not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations accorded under

any other law.' (§ 307.4, subd. (b).)" (*In re Raymond R., supra,* 26 Cal.App.4th at pp. 440-441.) Therefore, a good faith attempt to locate father is what is required.

Substantial evidence supports the juvenile court's finding that the Department made a good faith effort to locate father. (See *In re Sarah C.* (1992) 8 Cal.App.4th 964, 974.) None of the alleged failures identified by father's attorney diminishes the Department's efforts. The address father gave the court was nonexistent. We will not require the Department to engage in the idle act of sending notices to a nonexistent address. (*In re Vincent S.* (2001) 92 Cal.App.4th 1090, 1093, cert. den. *Stafford v. Los Angeles County Department of Children and Family Services* (2002) 537 U.S. 837; § 3532.) While father argues that the Department did not try to call him at the telephone number he provided the court, father's attorney did try that number and was unsuccessful. The Department did ask mother about father, and she stated she did not know how to reach him. Although she thought he was in jail, the Sheriff's Department confirmed they had no one by the name of Jaime E. in custody. Otherwise, the Department inquired of 19 sources and located a last known address for father and an address in Stockton. It sent notices to those two addresses; *the notice to Stockton was delivered,* giving rise to the inference father received it. Only the notice to the East 67th Street address was returned as undeliverable. In short, the evidence supports the juvenile court's finding that the Department conducted a search in good faith by engaging in a thorough and systematic investigation. (*In re Justice P., supra,* 123 Cal.App.4th at p. 188.)

4. *The notice of the disposition hearing sent to father did not contain the statutorily required information.*

Although we conclude that the due diligence and mailing passed muster, we agree with father's attorney that the notice of the disposition hearing that the Department sent on January 9, 2009, was inadequate.

If, for the disposition plan, the Department alleges that subdivision (b) of section 361.5 is applicable, the juvenile court must continue the proceedings for up to 30 days and the Department must notify each parent of the content of subdivision (b) of section 361.5 and inform them that if the court does not order reunification a permanency

planning hearing will be held, and that his or her parental rights may be terminated within the statutory timeframes. (§ 358, subd. (a)(3).)

The January 9, 2009 notice did not inform father, pursuant to section 358, subdivision (a)(3), that the Department was asking the juvenile court to deny reunification services to father because he was missing. (§ 361.5, subd. (b).) Nor did the notice inform father that if the court did not order reunification, a permanency planning hearing would be held and father's parental rights may be terminated within the statutory timeframes. (§ 358, subd. (a)(3).)

"A parent's fundamental right to adequate notice and the opportunity to be heard in dependency matters involving potential deprivation of the parental interest [citation] has little, if any, value unless the parent is advised of the *nature* of the hearing giving rise to that opportunity, including what will be decided therein. Only with adequate advisement can one choose to appear or not, to prepare or not, and to defend or not." (*In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1424.) We remand this case to the juvenile court to assure that notices to father of the disposition hearing contain the required information, including the social worker's recommendation, and the Department's status reports in accordance with section 358, subdivision (a)(3).

DISPOSITION

The jurisdiction order is affirmed. The disposition order is reversed and the matter is remanded to the juvenile court in accordance with the views expressed in this opinion.

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ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.